

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04

PLR-119719-07

Date:

October 12, 2007

Legend:

Decedent =
Wife =
Revocable Trust =

Date 1 =
Date 2 =
X =

Dear :

This is in response to the letter dated March 27, 2007 from your representative, and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election to treat a marital trust as two separate trusts under § 26.2652-2(c) of the Generation-Skipping Transfer (GST) Tax Regulations.

The facts and representations submitted are summarized as follows. Decedent died on Date 1 survived by Wife and two children. Date 1 is a date that is prior to December 27, 1995. Pursuant to the terms of his will, Decedent's residuary estate was distributed to Revocable Trust.

Article Third of Revocable Trust provides for the creation of Marital Trust, a QTIP trust with GST tax potential. Section 4 of Article Third, paragraph A, provides that Marital Trust is to be severed into two trusts, a GST Exempt Marital Trust and a GST Non-Exempt Marital Trust. The GST Exempt Marital Trust is to be funded with assets equal to the fair market value of all of Marital Trust's assets multiplied by a fraction, the numerator of which is \$X (Decedent's available GST exemption), and the denominator of which is the fair market value of all of Marital Trust's assets as finally determined for

federal estate tax purposes.

The executor of Decedent's estate retained a qualified tax professional to prepare the estate's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The Form 706 was timely filed. On Schedule M of Form 706, the executor elected to treat the assets of the Marital Trust as qualified terminable interest property (QTIP).

On Schedule R of Form 706, the executor made a special election under § 2652(a)(3) to treat the Marital Trust's assets, for GST tax purposes, as if the election under § 2056(b)(7) had not been made (a "reverse" QTIP election). Also, Schedule R reflects that the balance of Decedent's GST exemption, \$X, was allocated to the Marital Trust. The qualified tax professional, however, failed to split or advise the executor to split the Marital Trust into a GST Exempt and GST Non-Exempt Marital Trust. Wife died on Date 2, at which point the failure to split the Marital Trust was discovered.

Subsequent to the filing of Decedent's Form 706, § 26.2652-2(c) was issued. This regulation provides a transitional rule that allows certain trusts subject to a reverse QTIP election, to which GST tax exemption had been allocated, to be treated as two separate trusts. As a result of this rule, only a portion of the trust would be treated as subject to the reverse QTIP election and that portion would be treated as having a zero inclusion ratio. The deadline for making the election set forth in the transitional rule was June 24, 1996.

The trustees of the Marital Trust are requesting an extension of time to elect to treat the Marital Trust as two separate trusts pursuant to the terms of Revocable Trust and § 26.2652-2(c) such that one trust has an inclusion ratio of zero, due to the previous allocation of Decedent's GST exemption to the Marital Trust, and the other trust has an inclusion ratio of one for GST tax purposes. The reverse QTIP election would be treated as applying only to the trust with the zero inclusion ratio.

Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect for the year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that

any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2652(a)(3) provides that, with respect to any trust for which a deduction is allowed under § 2056(b)(7) (regarding qualified terminable interest property), the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST tax provisions as if the QTIP election had not been made. This election is referred to as the "reverse" QTIP election. The consequence of a reverse QTIP election is that the decedent remains, for GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST tax exemption may be allocated to that QTIP trust.

Section 26.2652-2(a) provides that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies.

Section 26.2652-2(c) provides that if a reverse QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Decedent's executor is granted an extension of time of 60 days from the date of this letter to make the election under § 26.2652-2(c) to treat the Marital Trust as two separate trusts, one of which has a zero inclusion ratio by reason of Decedent's GST exemption previously allocated to the Marital Trust. The election should be made by completing the statement required in § 26.2652-2(c) and submitting the election, a copy of the return on which the reverse QTIP election was made under § 2652(a)(3), and a copy of this letter, to and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: